

AD-14
Ct No.01
Jalpaiguri
13.09.2023
SP

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CRM (DB) 560 of 2023

In Re: - An application for bail under Section 439 of the Code of Criminal Procedure filed on **08.09.2023** in connection with **Rajganj** Police Station Case No. **265 of 2023** dated **26.05.2023** under Section **06 of the POCSO Act.**

And

In the matter of: BANAMALI ROY @ BANOMALI ROY

.... petitioner

Mr. Jaydeep Kanta Bhowmik
Mr. Sayontan Bhowmik
Ms. Rikta Sarkar

... for the petitioner

Mr. Ujjwal Luksom
Mr. Sagnik Sankar
Ms. Namrata Das

... for the State

1. Learned counsel for the petitioner argues that the petitioner is already in custody for more than 100 days. That apart, the medical report does not corroborate the allegation against the petitioner particularly in so far as there was no rupture of the hymen.
2. Learned counsel also places reliance on coordinate Bench judgments where in similar circumstances, bail was granted.
3. Learned counsel appearing for the State opposes the prayer for bail and contends that the medical report clearly shows that there was fresh mucosal tear. That apart, the

allegations against the petitioner are also borne out by the statement under Section 164 of the CRPC.

4. Upon a perusal of the cited judgments, we are of the opinion that the circumstances in the said cases were different from the case at hand.
5. The first case cited by the petitioner is that in CRM 6100 of 2022 where the Court recorded that the petitioner had love relationship with the victim.
6. That apart, the Court observed that considering the medical report it was not prima facie seen that there was any injury on the private part of the victim.
7. Such circumstances are not applicable here.
8. In the other cited judgment passed in CRM 3676 of 2022 the allegation was of an atrocious offence in so far as the victim had allegedly being bound and gagged and taken to the jungle after which she was repeatedly raped.
9. In such circumstances, the Court held that since there was no indication of injury in the genitalia of the victim in the medical report, bail was granted.
10. However, in the present case, the statement of the victim clearly shows that there is considerable apprehension of the offence having been committed by the petitioner, which need not be corroborated by a rupture in the hymen but it would suffice that there was mucosal tear, which is apparent from the medical report.

11. In such circumstances, keeping in view the gravity of the alleged offence, we are not inclined to grant bail. Accordingly, CRM(DB) 560 of 2023 is dismissed.
12. However, it is expected that the trial shall be expedited by the jurisdictional Court and the same shall preferably be concluded within nine months from date.

(Sabyasachi Bhattacharyya, J.)

(Uday Kumar, J.)